

En route to a rift

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By ALLISON MAIER Independent Record helenair.com | Posted: Saturday, January 22, 2011 11:50 pm |
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[Buy this photo](#) Eliza Wiley Independent Record Mark Reller, a property owner on Eagle Ridge Road, walks the contested road bordered by a fence that was at the heart of the lawsuit last year that led to a second suit last fall.

A dispute over a Helena Valley road has spawned two lawsuits and caused a rift between Lewis and Clark County and the citizens who live along the contested drive.

The tension was apparent Wednesday night, as Deputy County Attorney K. Paul Stahl attempted to explain to the gathered Eagle Ridge Road property owners why exactly they'd been sued. He faced a tough crowd with a lot of questions. And the overarching skepticism in the small conference room was somewhat less than quelled following more than an hour of constant — sometimes heated — exchange.

"It was incredibly frustrating. ... Nobody walked away from that meeting with an increased respect for government," said Eagle Ridge resident Mark Reller.

Several factors have contributed to the emotions tied up in the situation, but the basic fact is that, last fall, the county filed a lawsuit against all 36 property owners along Eagle Ridge Road, seeking a court opinion to determine whether it is a public road with a standard 60-foot easement. That would mean, essentially, that the county would have access to the land extending 30 feet on either side of the road, though it's technically private property.

The county filed the lawsuit in the midst of another legal dispute involving the road, in which residents Hiltrud and Jochen Schroeder filed a suit against the county to ask, essentially, the same question: Whether Eagle Ridge Road is, in fact, public.

Several other property owners became involved in the lawsuit as well, requesting that the court deem the road public and order the Schroeders to remove a fence they installed along part of its right-of-way and a gate that crosses it. Reller, one of the individuals involved in the suit, said the fence makes it difficult to clear plowed snow away from the road and the gate cuts off access to the road, forcing residents to stop their cars on an icy hill so they could open it and proceed to their homes.

The matter went before District Court Judge Kathy Seeley, who stated in her November 2010 ruling that “Eagle Ridge Road is a public road, including the portion thereof that traverses the Schroeders’ property” and that “(t)he Schroeders shall remove the gate that may block public access to the road and that portion of their fence that infringes on the thirty-foot easement traversing their property.”

Seeley’s memorandum referenced various property deeds mentioning the easement on the property to make the determination about the fence. She based her declaration about the road’s public status on the legal concept of prescriptive use, which allows a drive to acquire a public road easement if, for at least five years, there has been “open, notorious, continuous, uninterrupted, exclusive use of the fixed course without permission of the owners.” Seeley stated that had been the case prior to the Schroeders’ acquisition of the property in 2006.

She noted that a rural improvement district was created in 1993 to deal with maintenance of Eagle Ridge Road through annual assessments paid by the property owners who use it to access their homes. An RID is similar to a city special improvement district. But Seeley also pointed out that establishing an RID is not one of the ways public roads come to be recognized using statutory requirements, “since roads which are the subject of rural improvement districts are normally public roads to begin with.”

Regardless, her final judgment about the road’s public status was, in Reller’s and many of his neighbors’ opinions, concrete. But because the judgment stemmed from a lawsuit focusing on a specific individual’s property, the county was wary of assuming Seeley meant it to apply to the entirety of the road. Thus followed the second lawsuit and the backlash from area residents, who found themselves sued multiple times in one year.

On top of that, they failed to understand the county’s reasoning behind the suit, many of them suspicious about the intention. During the meeting with Stahl, several residents expressed concerns that it was an attempt to draw more tax money into the county coffers or to move the road. Others saw it, simply, as a waste of the county’s time and money to take the issue back to court. The fact that there’s a \$70 appearance fee for defendants making a case before the District Court didn’t sit well, either, since was viewed as a penalty for people who wanted to make a case against the county, whereas it seemed as though it was “free to agree” with the suit.

None of this was helped by the county’s determination earlier last year that the agency through which the residents believed they were carrying out RID road maintenance — the Eagle Ridge Road Association — didn’t officially exist, thereby preventing them from using the snow plow that had cleared their roads for years. That particular technicality has yet to be resolved.

But in terms of the current lawsuit, the county’s intention is simply to clarify the status of Eagle Ridge Road to avoid any future problems, said Chief Administrative Officer Eric Bryson. Though road disputes are a constant in county affairs, he said this particular situation — with the county entering into a suit with everyone along a road — is unusual. And he admitted that the county could have done more by way of public outreach prior to filing court papers.

The evening gathering last week was meant to correct that, though the results weren’t what anyone had hoped for. Attorney Kim Wilson, who is representing three families in the suit, said the general take-home message seemed to be that the county was explaining why they were taking the Eagle Ridge residents to court and saying, essentially, “We hope you’ll join us.” He and Stahl found themselves butting heads throughout the meeting.

Regardless, the discussion did prompt the county to reconsider the situation. It has agreed to reimburse the court appearance payments to the residents, who should be getting checks in the mail within the next week. It hopes to further clarify what it’s trying to do, though it has not planned to drop the suit.

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